JURISDICTION

This Court has discretion as to whether or not it will review this case under the authority granted in Section 1254(1), Title 28, United States Code.

QUESTIONS PRESENTED

(1) Whether or not *Ryan* should be expanded so that it imposes liability by way of indemnity upon a shipowner and in favor of a shipper of cargo who had no exposure to potential liability without fault?

(2) Whether or not Sohio, the shipper, can recover attorneys' fees and litigation expenses incurred in successfully defending an action brought by Plaintiffs predicated on the alleged negligence of Sohio alone and unrelated to the negligence, if any, of Oil Transport and/or Greenville?

STATEMENT OF THE FACTS

On January 5, 1961, Sohio entered into a contract with Oil Transport, which contract is designated a "Liquid Cargo Charter Party", for the transportation of crude oil, from Hartford, Illinois, to Sohio's facilities at Mayersville, Mississippi. On August 28, 1961, Oil Transport, as Charterer, subcontracted one shipment to Greenville by an instrument designated as "Barge Charter Party". These two documents are found in the Appendix in the Court of Appeals.

In its Petition for Certiorari, Sohio makes certain statements concerning the language contained in the Liquid Cargo Charter Party between Sohio and Oil Transport.

In connection therewith, it is quite relevant to consider the language contained in the *force majeure* clause of the Barge Charter Party between Oil Transport and Greenville, where it is provided that:

> "The tow, its captain and Owner [Greenville] shall not . . . be responsible for any loss or damage arising or resulting from . . . inherent defect, quality or vice of the cargo; [or] any act or omission of the Charterer [Oil Transport], owner [Sohio], shipper [Sohio] or consignee of the cargo, their agents or representatives . . . ."

A fair reading of the two charter party agreements leads to the sensible conclusion that each party was to bear responsibility for its own negligence, while neither party was to be responsible for the other's negligence.

On September 7, 1961, during the discharge of cargo at the Sohio facility at Mayersville, Mississippi, Kenneth Ray McClure Hobart and Roy Lorenzo Jones entered the hold of one of the barges and died due to suffocation caused by the saturation of the atmosphere in the paricular compartment with hydrocarbon gases which drove out the necessary supply of oxygen. Subsequently, suit was brought by Hobart against Sohio under the Mississippi Wrongful Death Act, with Hobart alleging that the crude oil owned by Sohio was unusually dangerous, that Sohio knew, or should have known, of the unusually dangerous characteristics of the crude oil, and that Sohio failed to give any warning thereof to the Greenville crew of which Hobart and Jones were members. Sohio's negligence in "failing to warn" was alleged to be the proximate cause of the death of Hobart and Jones.

Factually, the allegations of negligence brought by Hobart and the proof introduced at trial by Hobart were directly strictly against Sohio. At no time during the course

of the proceedings did Hobart attempt to impose upon Sohio liability for any actions for which Oil Transport and/or Greenville should be held ultimately responsible. The alleged negligence with which Sohio was charged was not in any way derivative from acts or omissions of Oil Transport and/or Greenville. Rather, the matters over which Sohio was unsuccessfully sued related peculiarly to Sohio and to Sohio alone.

REASONS FOR DENYING CERTIORARI

(a) The Decision of the Court of Appeals Does Not Conflict with the Decision of the U. S. Court of Appeals for the Fourth Circuit in General Electric Company v. Moretz.

The thrust of Sohio's Petition for Certiorari is that there is a conflict between the decision below and the decision of the U. S. Court of Appeals for the Fourth Circuit in *General Electric Company* v. *Moretz*, 270 F.2d 780 (4 Cir., 1959), cert. den. 361 U.S. 964 (1960). Sohio insists that the Fourth and Fifth Circuits have rendered conflicting interpretations of *Ryan* and that this Court should now resolve that alleged conflict.

Greenville submits that this purported conflict between the Circuits is simply not there. With deference we submit that Sohio's characterization of *Moretz* as an application of the *Ryan* doctrine is mistaken.

(1) The Fourth Circuit's Decision in Moretz Is in No Way a Ryan-Compelled Decision.

There are several reasons why *Moretz*[1] does not conflict with the holding of the Court of Appeals below.

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1. Since the facts of *Moretz* are fully discussed in the Petition for Certiorari, that discussion will not be repeated here.

Most important of these is the fact that the holding of *Moretz* on the indemnity question is not dependent upon *Ryan* at all. In fact, if the entire discussion of *Ryan* in *Moretz* (see pages A50-A52, Appendix "E" to the Petition for Writ of Certiorari; 270 F.2d at 788-789) were deleted, the opinion of the Court would not suffer. A careful analysis of *Moretz* reveals that the Court reaches the decision to impose indemnity on Mason & Dixon (the carrier in that case) on grounds wholly independent of the *Ryan* doctrine. *Moretz* is based on the carrier's own negligence in violating specific I.C.C. regulations [49 C.F.R., §192.9] which formed a part of the contract between shipper and carrier. There is no question of inherent or implied obligations shouldered by the carrier - - - they are spelled out in black and white in the regulations. The *Moretz* Court finds that the contract between Mason & Dixon and General Electric consisted of the bill of lading covering the shipment issued under the published tariff, and several applicable statutes and regulations. The Court then finds that Mason & Dixon was guilty of a negligent breach of certain duties imposed upon it by the whole contract, that the breach of those duties was a proximate and superceding cause of the injuries suffered by plaintiff, and that Mason & Dixon should indemnify General Electric for those sums General Electric was required to pay the plaintiff. All of this is done without any reference to *Ryan* or to a *Ryan*-type implied duty to indemnify.

Then, and only after the indemnity issue has been decided, the Court discusses *Ryan* and its progeny. Nothing in that discussion supports the view that the *Moretz* Court thought the result it reached was compelled by the *Ryan* doctrine, or even that *Ryan* was necessary by the decision. Nothing in *Moretz* indicates that a different result would have been reached there had *Ryan* never been decided. *Moretz* refers to *Ryan* as involving "a similar ques-

tion in . . . [an] analogous situation". 270 F.2d at 788. And, to bolster the justice of the result it had already reached, *Moretz* notes that "the default of the shipper in the pending case was no greater than that of the shipowner in the cited cases [*Ryan* and progeny]". 270 F.2d at 789. In short, the discussion of *Ryan* in *Moretz* is pure dicta.

(2) The Posture of the Indemnitors Here and in Moretz Are Significantly Different.

A second significant distinction between *Moretz* and the opinion below is that the legal postures of the alleged indemnitors (Oil Transport and Greenville in this case, Mason & Dixon Lines, Inc. in *Moretz*) are different. In *Moretz*, Mason & Dixon was subject to potential liability for its own negligence and also for violations of certain statutory duties. Here, however, Greenville was subject to liability for its own negligence (under the very strict standard of the Jones Act, 46 U.S.C. §688; the Hobart and Jones boys were "Jones Act seamen") and was also saddled with an absolute, non-delegable duty to maintain the M/V WALTER WILLIAMSON and her tow in a seaworthy condition at all times. Indemnity aside, Greenville was already saddled with much greater potential liabilities than was Mason & Dixon. It is one thing to subject a carrier in the position of Mason & Dixon to potential liability to its shipper by way of indemnity, but it is quite a different matter to impose indemnity obligations on Greenville which was surely laboring under a heavy enough burden of potential liabilities as was.

(3) The Nature and Source of Indemnity Here and in Ryan Are Different from That in Moretz.

A third reason why *Moretz* and the decision of the Court of Appeals below are not in conflict is mentioned above. It is found in the nature and source of the alleged

warranty and duty to indemnify in each case. In *Moretz*, the duties imposed upon Mason & Dixon are found in the entire written contract between the shipper and the carrier. Provisions of certain statutes and I.C.C. regulations were made a part of that contract, and it was the breach of these that subjected Mason & Dixon to indemnity. In *Moretz* the carrier's duties are clearly spelled out as principles of positive law affecting the parties. Reference to equitable principles or implied obligations in no way aided the *Moretz* Court in casting upon the carrier a duty to indemnify. By way of contrast, the *Ryan* doctrine, sought to be imposed upon Greenville here, has always considered its warranty and resulting indemnity to be implied out of the relationship between the shipowner and the stevedoring company. It has always been founded upon equitable principles. The absolute, non-delegable warranty of seaworthiness imposed upon the shipowner, together with the stevedoring company's implied-in-fact warranty of workmanlike service, have always been the triggering factors. The source of the *Ryan*-type warranty, unlike the warranty found in *Moretz*, is in no way statutory or regulatory.

Moretz did not find the basis for its indemnity holding in the inherent relationship between the shipper and the carrier, nor did it devolve that holding from the necessity for protection of the shipper from the harshness of any warranty of its own as strict as the warranty of seaworthiness. *Moretz* instead looked to the provisions of certain statutes and regulations which it held to be a part of the contract between the shipper and carrier. The legal principles necessary to the decision in *Ryan* and *Moretz*, respectively, though similar in their substance, derive from entirely different generic sources. Likewise, the interpretation of *Ryan* in the Fifth Circuit's decision in the case at bar construes legal principles wholly different in point

of origin from those of *Moretz*. Therefore, the failure of the Court of Appeals below to permit indemnity here is not in conflict with the holding of the Fourth Circuit in *Moretz*.

(4) The Fourth Circuit Has Never Considered Moretz to Be in the Mainstream of Developing Ryanism.

Perhaps the best evidence of the proposition that the alleged conflict between the Circuits urged by Sohio is somewhat ephemeral is found within the Fourth Circuit itself. In *American Export Lines* v. *Norfolk Shipbuilding & Drydock Corporation*, 336 F.2d 525 (4 Cir., 1964), the Court applied the *Ryan* doctrine in favor of the owner *pro hac vice* of a ship which had been delivered to the shipyard. Since the ship was subject to potential liability for unseaworthiness, e.g., *West* v. *United States*, 361 U.S. 118 (1959), its owner *pro hac vice* had the need for protection traditionally found in *Ryan* cases. Therefore, the Court of Appeals correctly emphasized the "potential liability", 336 F.2d at 527, of the ship, and held that the shipyard must indemnify the owner *pro hac vice* for expenses incurred in the successful defense of the original personal injury claim.

What is significant about the *American Export Lines* case is that it never mentions *Moretz*. Chief Judge Sobeloff who was a member of the panel which decided *Moretz*, never once refers to *Moretz* in his *American Export Lines* opinion. Rather, he relies on *Ryan* and several other Supreme Court cases, as well as *Ryan* cases in the Fourth and other circuits. The compelling inference is that (1) *Moretz* does not involve an actual application of *Ryan* and (2) *Moretz* is outside the mainstream of developing *Ryanism*.

The same conclusion can be extrapolated from *Rederi A/B Dalen* v. *Maher*, 303 F.2d 565 (4 Cir., 1962), also a

traditional *Ryan*-type case in which *Moretz* is never mentioned.

In the Fourth Circuit cases in which *Moretz* is discussed, it has been uniformly distinguished. *Norfolk & Western Railway Co.* v. *Anderson's-Black Rock, Inc.*, 350 F.2d 917 (4 Cir., 1965); *Casella* v. *Norfolk & Western Railway Co.*, 381 F.2d 473 (4 Cir., 1967).

We have not found a single case in the Fourth Circuit or elsewhere that has considered *Moretz* to be a *Ryan*-compelled decision. Analogous on its facts, *maybe*. Compelled as a matter of law, *no*.

(b) The Fifth Circuit's Interpretation of the Ryan Doctrine Is Correct.

A further reason why certiorari should not be granted here is that the construction given *Ryan* consistently in the Fifth Circuit is in keeping with the spirit and intent, as well as the letter, of *Ryan* and its progeny. See, e.g., *Weyerhaeuser Steamship Co.* v. *Nacirema Operating Co.*, 355 U.S. 563 (1968); *Crumady* v. *The Joachim Hendric Fisser*, 358 U.S. 423 (1959); and *Italia Societa* v. *Oregon Stevedoring Co.*, 376 U.S. 315 (1964). Indeed, not only is the decision below a faithful application of the *Ryan* doctrine, but also it appears at least by implication in the later decisions of this Court that any conflict between the Fourth and Fifth Circuits has been resolved in favor of the position taken in the Fifth Circuit.

In *Ryan*, and in the cases following *Ryan*, the courts have frequently talked of the need for providing protection to the shipowner. This need derives from the absolute and non-delegable duty of seaworthiness which the general maritime law imposes upon all vessel owners. *The Osceola*, 189 U.S. 158 (1903); *Mahnich* v. *Southern S.S. Co.*, 321 U.S. 96 (1944). In the typical situation, the

stevedore takes control of the vessel during the loading and unloading operations and by law, because of the stevedore's expertise and the vessel owner's reliance upon that expertise, an implied warranty is written into the stevedoring contract to require the stevedore to perform the loading or unloading operation in a workmanlike manner. If this warranty is breached, and if the vessel owner suffers some loss as a proximate result of that breach, then the vessel owner is given the right to sue the stevedoring company by way of indemnity. Because the shipowners are faced with potential liability under *Sieracki*[2] without regard to their negligence and at a time when they have surrendered control of their vessels, and because of the special expertise of the stevedore company in conducting loading and unloading operations, the equitable doctrines of the general maritime law have been invoked to give the shipowners much needed protection.

In our case, however, the owner of the vessel involved (the party who was saddled with the absolute, non-delegable duty of providing a seaworthy vessel) has become the alleged indemnitor, not the indemnitee as in *Ryan*. In our case, the indemnitee, the party asking the Court for the favored treatment of *Ryan* doctrine, is the party from whom and to whom the cargo (Wyoming Sour Crude Oil), was being shipped. Of course, Sohio like any other party was exposed to liability to any person injured by Sohio's negligence. But the legal duties owed by Sohio to the crew working on September 7, 1961, were not nearly as great as the duties owed by the shipowner in the *Ryan* case. By the same token, Sohio's need for protection in the form of the indemnity doctrine is by no means as great as the shipowner's need for protection in the *Ryan* situation.

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2. *Seas Shipping Co.* v. *Sieracki*, 328 U.S. 85, 66 S.Ct. 872, 90 L.Ed. 1099 (1946).

We recognize the fact that the *Ryan* doctrine has been extended beyond the classic longshoremen-shipowner-stevedore situation. We are not aware, however, of any case in which the *Ryan* indemnity has been held to exist in favor of a party who did not need special protection because of the peculiar factual or legal position occupied by that party.

The cases in the Fifth Circuit, construing the *Ryan* indemnity doctrine, in addition to the opinion there in the case at bar, are legion. See e.g., *Halliburton Company* v. *Norton Drilling Company*, 302 F.2d 431 (5 Cir., 1962); *Delta Engineering Corporation* v. *Scott*, 322 F.2d 11 (5 Cir., 1963); *Ocean Drilling & Exploration Co.* v. *Berry Brothers Oil Field Service, Inc.*, 377 F.2d 511 (5 Cir., 1967), cert. denied 389 U.S. 849 (1967); *Centraal Stikstof Verkoopkanter, N.V.* v. *Walsh Stevedoring Company*, 380 F.2d 523 (5 Cir., 1967); *Loffland Brothers Company* v. *Roberts*, 386 F.2d 540 (5 Cir., 1967), cert. denied 389 U.S. 1040 (1967); *Grigsby* v. *Coastal Marine Service of Texas, Inc.*, 412 F.2d 1011 (5th Cir., 1969), cert. dis., 396 U.S. 1033 (1970); and *Smith Petroleum Service, Inc.* v. *Monsanto Chemical Co.*, 420 F.2d 1103 (5 Cir., 1970). See also Bue, *Admiralty Law in the Fifth Circuit—a Compendium for Practitioners*, 4 Houston L. Rev. 347, 408 (1966).

A few representative statements of Fifth Circuit's point of view are as follows:

In the *Ocean Drilling* case, this Court stated:

> "While freely implementing this contractual obligation of the stevedore to indemnify the shipowner in accordance with the liberal spirit of *Ryan*, we have hesitated, however, to extend it beyond those controversies involving the '*special rules governing the obligations and liability of shipowners*' which necessitated its formulation and justify its application." 377 F.2d at 513 [Emphasis added]

In the *Loffland Brothers* case, the Court again discussed the severe burdens placed upon the shipowner by the warranty of seaworthiness and made the following comment:

> "Recognizing this unique obligation on the part of a shipowner, we have held that the *Ryan* doctrine is *closely tied to a vessel and this obligation which the shipowner owes to those employed on the vessel* . . .
>
> We are accordingly extremely hesitant to extend the burdensome *Ryan* doctrine to situations not substantially similar to those which gave birth to the doctrine." 386 F.2d at 549 [Emphasis added]

And, in the instant case, the Court of Appeals fully considered the development of the *Ryan* doctrine and concluded that

> "The predicate of the doctrine is the shipowner's absolute nondelegable liability under the seaworthiness guaranty." 445 F.2d at 439.

These expressions, we believe, are fully consistent with the scope and substance of *Ryan* and the later cases in this Court construing *Ryan*.

Of these Fifth Circuit cases, all of which are post-*Moretz*, it is relevant to note that petitions for certiorari were filed and denied in at least two, *Ocean Drilling & Exploration Co.* v. *Berry Brothers Oil Field Service, Inc., supra;* and *Loffland Brothers Company* v. *Roberts, supra.* In both of these cases the Fifth Circuit's interpretation of *Ryan* pervades the opinion of the Court. Certiorari was denied in both cases in 1967.

We do not presume to know the reasons why certiorari was denied in *Ocean Drilling* and *Loffland Brothers.* We believe, however, it fair to assume that one of three possible reasons motivated the Court: (1) The decisions

of the Court of Appeals were correct, (2) no conflict was found with the interpretation of *Ryan* in other circuits, or (3) the issue simply was not important enough to merit review. If one or more of these reasons did guide the Court to deny certiorari in *Ocean Drilling* and *Loffland Brothers*, surely such reason or reasons would be equally compelling here.

We find nothing which has occurred since *Ocean Drilling* and *Loffland Brothers* which would require a different disposition of the instant petition for certiorari. There have been no intervening decisions in this Court which casts doubt upon the correctness of the Fifth Circuit's interpretation of the *Ryan* doctrine in this case. The alleged conflict, if any, with the Fourth Circuit's *Moretz* decision is no greater than it was in 1967. And, we know of no reason why the issues raised here are of any greater importance now than they were in 1967.

In short, we believe the denials of certiorari in *Ocean Drilling* and *Loffland Brothers* constitute substantial authority for the denial of certiorari here.

In addition it is noteworthy that certiorari was denied in *Moretz*, 361 U.S. 964 (1960). This, too, says something about the importance of the question being raised here.

The construction given *Ryan* in the Fifth Circuit may also be found in other Circuits. A case in point is the decision of the United States Court of Appeals for the Second Circuit in *Schwartz* v. *Compagnie Generale Trans-Atlantique*, 405 F.2d 270 (2 Cir., 1968). In *Schwartz*, the original cause of action against the shipowner had been asserted by one who was not owed a duty of seaworthiness. The shipowner sought to implead the plaintiff's employer, the United States Government, under the *Ryan* doctrine. In *Schwartz*, the Court held that, since there was no duty

of seaworthiness owed to the plaintiff by the owner of the vessel, there were no underlying equitable considerations which would allow the indemnity suit over and against the employer of the plaintiff. The Court began by noting that:

> "This warranty doctrine is one of several special rules developed to further a policy of both minimizing accidents to seamen and stevedores which arise out of the hazards of their ship board occupation and compensating those workers who do fall victim to these accidents." 405 F.2d at 275.

The Court then went on to note that one of these "special rules" was the warranty of seaworthiness and then concluded that the plaintiff was not within the scope of that warranty. The Court then stated:

> "The Courts have recognized that the doctrine of seaworthiness, which creates liability without fault, places an extremely heavy burden of liability on the shipowner. Indemnity is permitted the shipowner because his reliance upon an independent contractor frequently results in the shipowner's vicarious liability for injuries without fault . . . Since any equitable considerations underlying the decision of courts to require indemnity by applying the implied warranty of workmanlike service are *ultimately derived from a shipowner's liabilities under the seaworthiness guaranty,* where there is no such possible liability, as in this case, there can be no requirement of indemnity under the warranty doctrine.
>
> The fact that a shipowner may be found liable to plaintiff due to the ship's negligence is hardly an injustice *per se* requiring this court to invoke an artificial equitable doctrine of indemnity. The shipowner is obligated to pay plaintiff only if it was negligent, and if, as a proximate result thereof, Schwartz suffered injuries; . . ." 405 F.2d at 276 (Emphasis added)

The Second Circuit's construction of *Ryan* is thus precisely the same as that prevailing in the Fifth Circuit.

It is also relevant to note at this point that in a recent case, admittedly factually distinguishable, the United States Court of Appeals for the Tenth Circuit has refused to expand *Ryan* beyond its originally intended scope. *Morris* v. *Uhl & Lopez Engineers, Inc.*, 442 F.2d 1247 (10 Cir. 1971).

(c) This Is Not a Proper Case for Resolving Any Conflict Between the Fourth and Fifth Circuits Because There Is an Independent Basis Upon Which the Judgment Below Must Be Sustained.

Even though the Court should believe that a conflict exists between the Fourth and Fifth Circuits, Greenville submits that this is not a proper case for resolving that conflict. If we assume *arguendo* that the *Moretz* indemnity rules should be applied here, Sohio still is not entitled to recover from Greenville and Oil Transport. This is because, even under *Moretz*, the facts of this case do not give rise to a right of indemnity against Greenville and Oil Transport.

The basis upon which Hobart sued Sohio is totally unrelated, factually and legally, to any conduct on the part of Greenville which might be construed as a breach of any warranty owed by Greenville to Sohio. Although the situs of the accident was upon the navigable waterways of the United States, the cause of action asserted by Hobart against Sohio was wholly civil and non-maritime in nature. The suit was predicated upon Mississippi wrongful death statute, with Hobart alleging negligence on the part of Sohio. Jurisdiction was based upon diversity of citizenship, not upon the maritime jurisdiction of the court. The specific act of negligence with which Sohio was charged

was an alleged failure to warn the Hobart and Jones boys of the dangerous nature of the cargo, Wyoming Sour Crude Oil. Sohio is not charged with committing any act or omission for which Oil Transport and/or Greenville should ultimately be held responsible. The alleged negligence in the principal case was that of Sohio and of Sohio alone. The cause of action against Sohio was not derived from any actions, negligent or otherwise, for which Oil Transport and/or Greenville were responsible. As the District Court noted:

> "In the case sub judice the demand contained in the complaint is not bottomed on an act of negligence, or failure to perform a duty on the part of the carriers, or either of them, but rather on the alleged acts of negligence committed by the shipper, the owner of the cargo, in that the shipper failed to warn the crew members of the dangers inherent to the oil, which were known to it but unknown to the crew of the vessel." Petition for Certiorari, Appendix, p. A. 18.

In the Courts below, Sohio carefully constructed a factual theory upon which it rests the conclusion that Greenville breached its alleged warranty of workmanlike service. Aside from the fact that neither Judge Clayton nor Judge Smith made factual findings remotely resembling those made by Sohio (which in and of itself proves fatal to Sohio's cause), even if we assume those facts to be true, they are in no way related to the "failure to warn" negligence cause of action asserted by Hobart against Sohio. We realize that the basis of liability from the stevedore to the shipowner does not necessarily have to be the same as the basis of liability from the shipowner to injured worker —the former being contractual in nature, while the latter sounds in tort. This difference, however, is legal, not factual. The factual basis upon which the *Ryan* indemnity suit is predicated must be substantially related to, if not

identical to, the origin of the cause of action asserted by the injured longshoreman and the resulting loss to the shipowner. There must be a causal connection between the actions of the indemnitor which breached the implied warranty and the loss sustained by the indemnitee.

In the instant case, this necessary causal nexus, even assuming Sohio's version of the facts to be true, cannot be found. The loss was occasioned by Hobart's belief that there was some inherently dangerous quality in Wyoming Sour Crude Oil of which not only the decedents but also the master and entire crew of Greenville's vessel were unaware. Sohio's loss was sustained because Hobart filed a lawsuit against it predicated solely upon the alleged negligence of Sohio, which was unrelated to anything done or left undone by Greenville. Assuming *arguendo* that there was a factual basis upon which Greenville Towing might have been held liable to Hobart, his Complaint and proof make no mention thereof.

The cases in this Court are clear that, even where a three party lawsuit is covered by the *Ryan* doctrine, the third party plaintiff must establish factually that the third party defendant breached the implied warranty of workmanlike service and that the breach proximately caused the loss sustained by the third party plaintiff. *Weyerhaeuser Steamship Co.* v. *Nacirema Operating Co., supra; Atlantic and Gulf Stevedores, Inc* v. *Ellerman Lines, Ltd.*, 369 U.S. 355 (1962); *International Terminal Operating Co.* v. *N. V. Nederl. Amerik Stoomv Maats.*, 393 U.S. 74 (1968). In any lawsuit, tort or contract, the plaintiff must establish a factual causal connection between the breach of a legal duty owed by the defendant and the loss sustained by the plaintiff.

Here, the alleged negligence in the principal action successfully defended by Sohio was the allegation that Sohio

failed to warn the members of the crew of the vessel and barges involved of certain alleged dangers having to do with the crude oil being transported. There is no allegation whatsoever in the Complaint that Greenville knew of these alleged dangers, and no proof at the trial implicated Greenville in the alleged "failure to warn". In fact, the principal contention of Hobart throughout has been that Sohio failed to warn the crew of Greenville's vessel of these dangers. Clearly, the negligence involved in these allegations is not imputed to Greenville. This negligence, if any, was strictly that of Sohio and Sohio alone. How then can it be said that Greenville Towing Company is responsible for Sohio's attorney's fees and litigation expenses incurred in the successful defense of the principal action here involved?

In the above view of the matter, this case becomes less than attractive as a vehicle for resolving any conflict between the Fourth and Fifth Circuits. Even though this Court should find that such a conflict exists, and even though that conflict should be resolved as Sohio suggests, the judgment below must still be affirmed. Because of the absence of a causal relationship between the conduct of Greenville and the theory on which Hobart brought suit against Sohio, indemnity does not lie. Accordingly, the granting of certiorari here would be in vain.

The Court has in the past recognized the validity of the objection being raised here. In *S/S Monrosa* v. *Carbon Black Export,* 359 U.S. 180 (1959), the Court noted that

> "while this Court decides questions of public importance, it decides them in the context of meaningful litigation. Its function in resolving conflicts among the Courts of Appeals is judicial, not simply administrative or managerial. Resolution here of the extent to which these bill of lading provisions [the issue in conflict among the circuits] may be given effect by

our courts can await a day when the issue is posed less abstractly." 359 U.S. at 184.

Here, the District Court correctly held that the facts of this case take it outside of *Ryan* even if *Ryan* applies. There is in this case, therefore, an independent or alternative ground on which the judgment below can be sustained. Where this is so, the appearance of a conflict between the Circuits does not constitute an adequate reason for the grant of certiorari.

CONCLUSION

For the reasons stated above, Respondent respectfully and with deference suggests that there is neither a conflict between the circuits nor are there any special or important reasons present in this case to support the granting of the Petition for a Writ of Certiorari. The decision of the Court of Appeals in the instant case is sound. There is no reason for further review.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, JAMES L. ROBERTSON, one of the attorneys of record for Greenville Towing Company, do hereby certify that I have this day served a true and correct copy of the foregoing Brief For Greenville Towing Company, Respondent, In Opposition To Petition For Writ Of Certiorari, has been this day mailed, postage prepaid, to the following attorneys of record for the various parties herein:

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THIS the 27th day of October, 1971.

JAMES L. ROBERTSON